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EXAMINER

KOPEC, MARK T

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ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE
BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Johannes G. Bednorz and Carl A. Mueller

Appeal 2009-003320
Application 08/479,810
Technology Center 1700

Mailed: May 11, 2010

DECISION ON PETITION

This is a decision on the "Request to Reopen Prosecution Under 37 C.F.R. § 41.50(a)(2)(i) or 37 C.F.R. § 41.50(b)(2)," filed November 17, 2009 ("Petition"). This Request will be treated as a Petition to the Chief Administrative Patent Judge under 37 C.F.R. § 41.3(a).

FINDINGS

1. On September 17, 2009, a Decision on Appeal was entered affirming and reversing rejections of the Examiner under 35 U.S.C. § 112, ¶ 1 for lack of enablement.
2. Under 37 C.F.R. § 41.50(a)(2)(i), a request to reopen prosecution is permitted if a supplemental examiner's answer is written in response to a

remand by the Board of Patent Appeals and Interferences ("Board") for further consideration of a rejection.

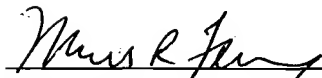
3. The Decision on Appeal does not include a remand under 37 C.F.R. § 41.50(a)(1) for further consideration of a rejection, and no supplemental examiner's answer has been entered.
4. Under 37 C.F.R. § 41.50(b)(1), a request to reopen prosecution also is permitted in response to a new ground of rejection entered by the Board.
5. The Decision on Appeal does not include a new ground of rejection under 37 C.F.R. § 41.50(b).
6. A decision on appeal by a panel of the Board is a final agency action on the appealed claims (*see* 37 C.F.R. § 41.2) subject to revision only upon reconsideration in response to a request for rehearing. *See* 37 C.F.R. § 41.52.

DISCUSSION

As indicated, in the present posture of this appeal, no basis exists under applicable rules for reopening prosecution.

DECISION

In view of the foregoing, the Petition is DENIED.



Michael R. Fleming
Chief Administrative Patent Judge

Appeal 2009-003320
Application 08/479,810

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